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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD MONROE OFFERMAN,

Defendant and Appellant.

2d Crim. No. B217017  
(Super. Ct. No. 46459)  
(Ventura County)

Donald Monroe Offerman appeals from the order, entered after a jury trial, extending for one year his involuntary commitment as a mentally disordered offender (MDO) pursuant to Penal Code section 2972.<sup>1</sup> He contends the judgment must be reversed because there is no substantial evidence that he poses a substantial danger of physical harm to others. We affirm.

*Facts*

Appellant pleaded guilty to battery on a police officer (§ 243, subd. (c)(1)), and was sentenced to four years in state prison. In December 2004, he was paroled to Atascadero State Hospital (ASH) as an MDO. He was later transferred from ASH to Metropolitan State Hospital. We have twice affirmed orders, entered after jury trials, extending appellant's MDO commitment. (No. B200645, No. B192769.)

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

Throughout his hospitalization, appellant has remained almost completely mute. He refuses to speak with treatment staff and very rarely speaks to fellow patients. On rare occasions, appellant uses cards or pieces of paper, printed with the words "Yes" and "No," to respond to staff questions. More frequently, he simply turns or walks away when spoken to. Appellant does not attend individual or group therapy and refuses to be interviewed by the community program director for the Ventura County Conditional Release (CONREP) program.

In 2005 and 2006, appellant was involuntarily medicated because he refused to take prescribed anti-psychotic medication. This required that he be restrained by four or five men while an injection was administered. Appellant began taking the medication voluntarily in 2006. Since that time, he has not engaged in any "dangerous behavior in the hospital." Dr. Swarnalatha Ramdev, appellant's psychiatrist, described him as being "cooperative with the unit routine but not with the treatment plan."

Appellant's current diagnosis is schizophrenia, paranoid type. He stopped taking his medication prior to trial because, he explained to the jury, "I don't need it and I don't want my presentation to be accredited to a drug." He testified that he chooses not to speak with hospital staff or the CONREP director because "the burden of proof is on the State hospital staff to prove that I have a severe mental disorder and that I am a substantial danger, physical harm to others. I did not want to take any chances that [they] could misquote me, lie, et cetera."

Appellant does not believe that he has a mental illness or requires treatment. He also denies ever having visual or auditory hallucinations. He testified, however, that a number of "peculiar" situations have occurred over the years. For example, in 1989 a friend told him: "'Someone wants to kill you in ten years.' When [appellant] asked him who and why, he wouldn't tell [appellant]." Appellant stopped communicating with that friend but then saw him again, 10 months later, while serving a brief jail sentence in another county. Appellant also believes that his father "may have a hand in President Kennedy's assassination, that he may have a hand in getting computer

chips into the water supply, and that satellites may be able to send to earth energy sufficient to explode the chips and people."

Dr. Ramdev opined that appellant's mental illness is not in remission, even though his refusal to speak makes it difficult for her to determine whether he is currently delusional or experiencing auditory hallucinations. Schizophrenia is a chronic illness; it "is not curable but the symptoms can be controlled." Appellant's muteness and his refusal to participate in treatment are themselves evidence that his mental illness is not in remission. Dr. Ramdev also noted that, while appellant has not been violent during his hospitalization, he continues to present a substantial danger of physical harm to others. Appellant has a history of committing violent crimes and of substance abuse. He also lacks insight into both his mental illness and his substance abuse. As a result, "the chances of recovery is nil. And once [patients like appellant] get out of the hospital, they believe they don't need medication and don't have mental illness, they will revert back to using alcohol and become dangerous again."

Dr. John Schipper, a clinical psychologist and the director of Ventura County's CONREP program, agreed that appellant has schizophrenia that is not in remission. He based that opinion on appellant's medical history, his prior testimony indicating that he experiences delusions and responds to internal stimuli, and his rigidity in refusing to speak or participate in therapy, behaviors that prevent him from being considered for release. Dr. Schipper opined that appellant continues to represent a substantial danger of physical harm to others because his mental illness caused him to be violent in the past and is not currently in remission.

#### *Discussion*

Substantial evidence supports the jury's finding that appellant continues to qualify as an MDO. (*People v. Miller* (1994) 25 Cal.App.4th 913, 919-920.) Appellant suffers from a chronic mental illness that he refuses to acknowledge or treat. The illness has caused him to be violent in the past. According to both Dr. Ramdev and Dr. Schipper, there is a substantial danger that appellant will once again become violent if he does not participate in appropriate treatment and is not hospitalized. This constitutes

substantial evidence that appellant meets the statutory MDO criteria. (*People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 490.) There is no requirement that the People prove appellant engaged in violence during the prior commitment period. (*People v. Hubbartt* (2001) 88 Cal.App.4th 1202, 1219.)

The present case remains distinguishable from *People v. Gibson* (1988) 204 Cal.App.3d 1425, for the reasons we cited in our opinion on appellant's prior appeal (No. B200645). In *Gibson*, we held unconstitutional a former version of the MDO statute that created a presumption of dangerousness based solely on unremitted mental illness. Here, the finding that appellant presently represents a substantial danger of physical harm to others is based on more than the bare fact that he continues to suffer from schizophrenia. The chronic nature of that illness, his history of violent behavior, his continued elective muteness and his continued refusal to participate in therapy or other forms of treatment all provide substantial evidentiary support for a rational inference that appellant presently poses a substantial risk of physical harm to others.

*Conclusion*

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Allan L. Steele, Judge  
Superior Court County of Ventura

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